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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of**Communications Assistance for
Law Enforcement Act**

**CC Docket No. 97-213
DA No. 98-762**

**REPLY COMMENTS OF THE
TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

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SUMMARY

On April 20, 1998, the Commission issued a *Public Notice*, seeking comments on “how the Commission can most quickly and efficiently extend the compliance deadline, assuming such an extension is warranted, particularly if it appears that the factors supporting an extension apply equally to large numbers of telecommunications carriers.”¹

The Telecommunications Industry Association (“TIA”) joins the overwhelming majority of commenting parties in urging the Commission to extend, on an industry-wide basis, the October 25, 1998 compliance date for the Communications Assistance for Law Enforcement Act (“CALEA”).² The voluminous record already before the Commission clearly demonstrates that, because of the prolonged disputes and delays regarding both the Attorney General’s capacity requirements and the industry capability standard, compliance by that date is not reasonably achievable.

Thus, TIA respectfully requests that the Commission exercise its authority under section 107 of CALEA and grant at least a two-year extension of the compliance deadline. In order to minimize the administrative burden on both the industry and the Commission, TIA encourages the Commission to grant such an extension on an industry-wide basis. As the Commission has noted, all telecommunications carriers are identically situated and it would serve no public purpose for them to prepare and the Commission to review potentially thousands of essentially redundant extension requests.

¹ Public Notice, *In the Matter of Communication Assistance for Law Enforcement Act*, ¶ 9, DA No. 98-762, CC Docket No. 97-213 (released on April 20, 1998).

² Pub. L. 103-414, 108 Stat. 4279 (1994), *codified at* 47 U.S.C. §§ 1001 *et seq.*

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To: The Commission

**REPLY COMMENTS OF THE
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The Telecommunications Industry Association ("TIA"),¹ by its attorneys, respectfully submits these reply comments on the Commission's *Public Notice* in this proceeding.² TIA joins the overwhelming majority of commenting parties in urging the Commission to extend, on an industry-wide basis, the October 25, 1998 assistance capability compliance date for the Communications Assistance for Law Enforcement Act ("CALEA").³

I. INTRODUCTION

On April 20, 1998, the Federal Communications Commission issued a *Public*

¹ TIA is a national, full-service trade association of over 900 small and large companies that provide communications and information technology products, materials, systems, distribution services and professional services in the United States and around the world. TIA is accredited by the American National Standards Institute ("ANSI") to issue standards for the industry.

² Public Notice, *In the Matter of Communication Assistance for Law Enforcement Act*, DA No. 98-762, CC Docket No. 97-213 (released on April 20, 1998) ("Public Notice").

³ Pub. L. 103-414, 108 Stat. 4279 (1994), *codified at* 47 U.S.C. §§ 1001 *et seq.*

Notice, seeking comments on the several petitions currently pending before the Commission in this matter. Among the issues on which the Commission sought comments was “how the Commission can most quickly and efficiently extend the compliance deadline, assuming such an extension is warranted, particularly if it appears that the factors supporting an extension apply equally to large numbers of telecommunications carriers.”⁴

With the exception of the joint comments filed by the United States Department of Justice (“Department” or “DOJ”) and the Federal Bureau of Investigation (“FBI”),⁵ the comments received by the Commission last Friday overwhelmingly support an industry-wide extension of the compliance deadline.⁶ As the Center for Democracy and Technology (“CDT”)

⁴ Public Notice, ¶ 9.

⁵ Comments of the United States Department of Justice and Federal Bureau of Investigation (filed on May 8, 1998) (“DoJ/FBI Joint Comments”).

⁶ Comments of AirTouch Communications, Inc. (“AirTouch Comments”); Comments of Aliant Communications (“Aliant Comments”); Comments of ALLTEL Communications, Inc.; Comments of the Ameritech Operating Companies, *et al.* (“Ameritech Comments”); Comments of AT&T Corporation (“AT&T Comment”); Comments of the Association for Local Telecommunications Services (ALTS Comments); Comments of Bell Atlantic Mobile, Inc. (“BAM Comments”); Comments of the Cellular Telecommunications Industry Association (“CTIA”) (“CTIA Comments”); Comments of Centennial Cellular Corp.; Comments of the Center for Democracy and Technology (“CDT Comments”); Comments of CenturyTel Wireless, Inc. (CenturyTel Comments”); Comments of the Electronic Privacy Information Center, *et al.* (“EPIC Comments”); Comments of GTE Service Corporation (“GTE Comments”); Comments of Liberty Cellular, Inc., *et al.* (“Liberty Comments”); Comments of Omnipoint Communications, Inc. (“Omnipoint Comments”); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO Comments”); Comments of the National Telephone Cooperative Association; Comments of Nextel Communications, Inc. (“Nextel Comments”); Comments of Northern Telecom Inc. (“Nortel Comments”); Comments of Paging Network, Inc. (“PageNet Comments”); Comments of the Personal Communications Industry Association (“PCIA”) (“PCIA Comments”); Comments of PrimeCo Personal Communications, L.P. (“PrimeCo Comments”); Comments of Powertel, Inc.; Comments of the Rural Cellular Association (“RCA Comments”); Comments of SBC Communications Inc. (“SBC Comments”); Comments of Southern Communications Services, Inc. (“Southern Comments”); Comments of Sprint Spectrum L.P. (“Sprint Comments”); Comments of the Telecommunications Industry Association (“TIA Comments”); Comments of 360° Communications
(Continued ...)

observed, “[c]learly, as everyone who has addressed this issue has recognized, the October deadline cannot stand. There is simply no way that industry can make its networks CALEA-compliant in five short months given the controversy over the meaning of the Act itself and the long lead time necessary for implementation.”⁷

Because the Department is virtually the only party to oppose this unanimous opinion, these reply comments principally focus on the issues raised in the Department’s filing.

II. INDUSTRY IS ENTITLED TO AN EXTENSION

TIA agrees with the overwhelming number of petitioners and commenters who have advised the Commission that an extension of the October 25, 1998 capability deadline is necessary. Because of prolonged disputes and delays regarding both the Attorney General’s capacity requirements and the industry capability standard, the technology necessary for compliance with CALEA is not available today. The continuing dispute over what capabilities CALEA requires -- brought before the Commission in competing petitions by CDT,⁸ and the Department and FBI⁹ -- only threatens to further delay the development of such equipment. In

Company (“360° Comments”); Comments of U.S. West, Inc. (“U.S. West Comments”); Comments of the United States Telephone Association (“USTA”) (“USTA Comments”).

⁷ CDT Comment, at 3.

⁸ Center for Democracy and Technology, *Petition for Rulemaking under Sections 107 and 109 of the Communications Assistance for Law Enforcement Act* (filed March 26, 1998) (“CDT Petition”).

⁹ United States Department of Justice and Federal Bureau of Investigation, *Joint Petition for Rulemaking for Establishment of Technical Requirements and Standards for Telecommunications Carrier Assistance Capabilities Under the Communications Assistance for Law Enforcement Act* (filed March 27, 1998) (“DoJ/FBI Joint Petition”).

their joint comments, however, the Department and FBI disagree with the nearly unanimous opinion that an extension is warranted at this time.

The Government first asserts that the industry has “failed to establish, beyond bald assertions, the actual need for an industry-wide extension.”¹⁰ To the contrary, as TIA summarized in its initial comment, a voluminous record has already been established before the Commission, demonstrating that -- because of delays in the implementation of CALEA -- an extension of the compliance deadline is required.¹¹ At the time the Commission issued its *Public Notice*, it had before it five petitions that all agreed that an extension of the compliance deadline was necessary.¹² Since then, several more parties -- including the USTA on behalf of its approximately 1,000 members -- have filed petitions, advising the Commission of the reasons

¹⁰ DoJ/FBI Joint Comment, at 2. *See also id.*, at 16.

¹¹ TIA Comments, at 2-3. *See also* Ameritech Comments, at 4-8; AT&T Comments, at 3-5; CTIA Comments, at 4-6; OPASTCO Comments, at 4-5; PrimeCo Comments, at 3; Bell South Corporation, *et al.*, *Combined Comments and Petition for Extension of Time*, at 2-4 (filed on May 8, 1998) (“BellSouth Petition”).

¹² TIA, *Petition for Rulemaking Under Section 1006 of the Communications Act of 1934, as amended, and Section 107 of the Communications Assistance for Law Enforcement Act to Resolve Technical Issues and Establish a New Compliance Schedule* (filed April 2, 1998) (“TIA Petition”); AT&T Wireless Services, Inc., Lucent Technologies Inc. & Ericsson Inc., *Petition for Extension of the Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act* (filed March 30, 1997) (“AT&T Wireless Petition”); DoJ/FBI Joint Petition; CDT Petition; CTIA, *Petition for Rulemaking in the Matter of Implementation of the Communications Assistance for Law Enforcement Act* (filed on July 16, 1997). *See also* CTIA, PCIA & USTA, *Response to Petition for Rulemaking for Establishment of Technical Standards for Telecommunications Carriers and a New Compliance Schedule under the Communications Assistance for Law Enforcement Act* (filed on April 9, 1998) (“Carrier Association Response”).

why they will be unable to comply with CALEA's assistance capability requirements by that date and requesting an extension of the deadline.¹³

One of the principal reasons for an extension is the absence of commercially available, CALEA-compliant equipment. TIA, as the representative of telecommunications manufacturers, is unaware of any member who will have equipment that fully satisfies CALEA's requirements available for testing and deployment by their carrier customers by October 25, 1998. Four of TIA's members have filed separate documents, advising the Commission of the same.¹⁴

¹³ BellSouth Petition; ICG Telecom Group, Inc., *Petition for Extension and Comments* (filed on May 8, 1998) ("ICG Petition"); United States Cellular Corporation, *Comments and Petition for Extension of the Compliance Date* (filed on May 8, 1998); Centennial Cellular Corp., *Petition for Extension of the Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act* (filed on May 6, 1998); AirTouch Communications, Inc. & Motorola, Inc., *Joint Petition for an Extension of the CALEA Assistance Capability Compliance Date* (filed on May 5, 1998) ("AirTouch Petition"); AirTouch Paging, Inc., *Petition for an Extension of the CALEA Capability Assistance Compliance Date* (filed on May 4, 1998) ("AirTouch Paging Petition"); Ameritech Operating Companies and Ameritech Mobile Communications, Inc., *Petition for the Extension of the Compliance Date Under Section 107 of the Communications Assistance for Law Enforcement Act* (filed on April 24, 1998) ("Ameritech Petition"); USTA, *Petition for Extension Under the Compliance Date Under Section 107(c) of the Communications Assistance for Law Enforcement Act* (filed on April 24, 1998) ("USTA Petition"); Powertel, Inc., *Petition for an Extension of Time to Comply with the Capability Requirements of Section 103 of the Communications Assistance for Law Enforcement Act* (filed on April 23, 1998); PrimeCo Personal Communications, L.P., *Petition for an Extension of CALEA's Assistance Capability Compliance Date* (filed on April 21, 1998) ("PrimeCo Petition").

In addition, several other companies have presented fairly detailed, individualized explanations of the same in their comments to the Commission's *Public Notice*. See, e.g., BAM Comments, at 3-4; CenturyTel Comments, at 5 & 7; Southern Comments, at 4-5; Sprint Comments, at 2-3; 360° Comments, at 5-6.

¹⁴ See Nortel Comments; AirTouch Petition (Motorola); AT&T Wireless Petition (Lucent and Ericsson).

Even the network-based solution being developed by Bell Emergis, and mentioned in the FBI's 1998 Implementation Report to Congress, does not appear to be available by then. In its recent *Petition*, Ameritech noted that

Ameritech's switch and translations experts thoroughly reviewed and analyzed the Bell Emergis product according to the criteria established by the Interim Standard. Ameritech concluded that Bell Emergis' network-based solution had significant technical problems that would require substantial modification before it could operate with the existing network and be compliant with CALEA.¹⁵

Similarly, in its comments, Bell Emergis does not claim that it will have a solution available by October 25, 1998 that will fully satisfy the capability requirements of J-STD-025. Instead, it only asserts that "our solution provides a novel approach to resolving *some* of the issues surrounding compliance of CALEA" and that "a *significant* proportion of the desired feature set identified by law enforcement agencies is readily supported."¹⁶ As Bell Emergis acknowledges, "certain CALEA functionality can only be provided through a switch-based solution."¹⁷ As a result, Bell Emergis concludes that "a pragmatic view would suggest that with less than 6 months

¹⁵ Ameritech Petition, at 6-7. *See also* Ameritech Comments, at 7; BellSouth Petition, at 12 ("BellSouth has investigated other potential solutions and is unaware of any network-based solution."); SBC Comments, at 2 ("SBC has diligently conferred with manufacturers and designers known to be capable of potentially developing such a solution, and it is clear to SBC's technical experts that any such solution cannot be made generally available by October, 1998. It is equally clear to SBC that no such solution has yet been proved to be effective with respect to all presently installed or deployed switching platforms. Any "solution" that cannot actually work with each of the different platforms presently employed (or proposed to be employed) by carriers is, in truth, no solution at all.")

¹⁶ Comments of Bell Emergis - Intelligent Signalling Technologies, at 4 & 3 (filed on May 8, 1998) ("Bell Emergis Comments") (emphasis added).

¹⁷ *Id.*, at 3. Bell Emergis also notes that "[it] will shortly be taking steps to identify areas where mutual cooperation with switch vendors could ultimately lead to fully compliant networks for all telecommunications operators deploying [its] product line." *Id.*

remaining before the October 25, 1998 date, serious challenges in terms of network engineering; contract negotiation; product material sourcing; installation, turn-up and integration testing, and training remain.”¹⁸

In fact, prior to their recent comments, even the Department and FBI appeared to recognize that the deadline could not be satisfied, and that an extension of the compliance date would be necessary. In January, the FBI released a report to Congress demonstrating that no major vendor would have a complete CALEA solution available by October 25, 1998.¹⁹ In February, the Attorney General advised Congress that manufacturers would require at least 18 months -- after the Commission’s final order resolving the pending challenges to the industry standard -- to build the software and equipment necessary to comply with that order.²⁰ Similarly, as part of an *ex parte* presentation to the Commission, the FBI advised that “the compliance date should be extended for a period of 18 months after the Commission’s Order is issued in this proceeding.”²¹

Even in their current comments, the Department and FBI recognize that “some carriers will claim that they are not prepared to achieve compliance with § 103 by October 25,

¹⁸ *Id.*, at 4.

¹⁹ Federal Bureau of Investigation, *Communications Assistance for Law Enforcement Act (CALEA) Implementation Report*, at 15 & Appendix B (January 26, 1998) (“1998 Implementation Report”).

²⁰ Testimony of the Attorney General before the House Appropriations Subcommittee for Commerce, State, Justice, the Judiciary and Related Agencies (February 26, 1998).

²¹ *Ex parte* letter by the Department of Justice and Federal Bureau of Investigation, CC Docket No. 97-213 (filed on April 14, 1998).

1998.”²² Rather than encourage the Commission to grant extensions for such companies, as CALEA provides, however, the Government suggests that “this type of individual hardship can nevertheless be dealt with practically and legally [through] the negotiation of forbearance agreements between the Department and individual manufacturers and their customers.”²³

In the past, Congress and privacy groups have criticized this approach by the Department as an attempt to blackmail industry into providing the punchlist. In a February 4, 1998 letter to the Attorney General and Director Freeh, for example, Senator Patrick Leahy voiced his concern “that if the capability compliance date is not extended, carriers may seek to avoid the risk of incurring substantial penalties and/or bad publicity, by striking deals with the Department of Justice and/or the FBI that will unravel the important balance among privacy, innovation and law enforcement interests around which the law was crafted.”²⁴

Indeed, as they acknowledge, the Department and FBI have pursued such agreements in the past with manufacturers.²⁵ They fail to mention, however, the reason why manufacturers have declined to participate in such agreements -- because the Department and

²² DoJ/FBI Joint Comments, at 17.

²³ *Id.*

²⁴ Letter from Senator Patrick Leahy to Attorney General Janet Reno and Director Louis Freeh (February 4, 1998).

²⁵ DoJ/FBI Joint Comments, at 17-18 (citing Letter from the Attorney General Janet Reno to Mr. Matthew J. Flanigan, President of TIA (January 22, 1998); Letter from Assistant Attorney General Steve Colgate to Mr. Thomas M. Barba, Steptoe & Johnson (February 3, 1998) (“Colgate Letter”)).

FBI insisted on industry agreeing to provide the punch list features.²⁶ If the Government were willing to accept a compliance schedule that focused only on J-STD-025, it might be possible to reach agreement on a reasonable compliance schedule. Otherwise, if the “individual hardships” are sufficient to convince the Department to grant forbearance, they should also be sufficient to entitle companies to an extension under section 107.

Second, the FBI contends that carriers are not entitled to an extension because the absence of a standard “does not excuse compliance with § 103.”²⁷ TIA agrees that section 107(a)(3) provides that “[t]he absence of technical requirements or standards for implementing the assistance capability requirements of section 103 shall not . . . relieve a carrier, manufacturer or telecommunications support services provider of the obligations imposed by section 103”²⁸ The Government’s argument, however, is a red herring. Industry and privacy groups are not seeking an extension simply because an industry standard has not been adopted -- in fact, it has. Instead, they are seeking an extension because CALEA implementation, in general, has been delayed for a variety of reasons, making compliance by October 25, 1998 impossible.

As mentioned above, there is already an extensive record before the Commission, documenting the numerous reasons why compliance will not be reasonably achievable by October 25, 1998. One factor is, of course, the repeated delays in passage of an industry standard -- caused in substantial part by the FBI’s intransigence on the punch list features.

²⁶ Colgate Letter, at 4 (“With respect to item 1, the term “CALEA capability requirements” refers to the functions defined in the TIA interim standard J-STD-025 *and* the first nine *punch list capabilities* described earlier in this letter.”) (emphasis added).

²⁷ DoJ/FBI Joint Comments, at 15. *See also id.*, at 6-7

²⁸ Section 107(a)(3); 47 U.S.C. § 1006(a)(3).

Another factor is the continued dispute between the FBI and privacy groups (with industry in between) over what capability CALEA requires.²⁹ The two-and-a half-year delay in the promulgation of a capacity standard for wireline and wireless telephony³⁰ (and the continued failure of the Attorney General to establish such requirements for other telecommunications sectors³¹) is another. The absence of a law enforcement “collection box” against which manufacturers can test their proposed solutions threatens to further delay compliance.³²

The inability to satisfy the initial October 25, 1998 compliance date is not because of industry’s failure to act. The Department and FBI’s joint comments quite overlook their own contribution to the delays experienced in CALEA implementation. In fact, as the Commission is aware, manufacturers and carriers alike have devoted enormous resources in a good faith effort to comply with CALEA’s requirements.³³ In addition to participating in TIA’s standards process

²⁹ See TIA Petition, at 5-7. See also, AT&T Wireless Petition, at 9-10; BAM Comments, at 3; Carrier Association Response, at 11; CDT Comments, at 1-2; PCIA Comments, at 10; USTA Comments, at 3-4.

³⁰ See, e.g., ALTS Comments, at 2; Ameritech Comments, at 9; Ameritech Petition, at 8; BellSouth Petition, at 9-10; Nortel Comments, at 4; OPASTCO Comments, at 3; PrimeCo Petition, at 4-5; USTA Petition, at 4.

³¹ AirTouch Comments, at 4-6; PageNet Comments, at 2; PCIA Comments, at 5-9; Southern Comments, 5. As PageNet observed, “Since the enactment of CALEA, industry associations have been working with law enforcement in order to develop CALEA capability standards for two-way voice networks, but law enforcement agencies have not had adequate time or resources to assist in establishing a CALEA capability standard for paging, narrowband PCS, and SMR.” PageNet Comments, at 2.

³² AT&T Wireless Petition, at 6 & n. 6; Nortel Comments, at 4; TIA Comments, at 12-13; TIA Petition, at 8 & n. 12.

³³ TIA Comments, at 14-18. See also AT&T Wireless Petition, at 3-4; BellSouth Petition, at 5; Nortel Comments, at 2 & 5; Sprint Comments, at 2. The FBI itself has acknowledged that the industry participants have not remained idle, noting “the good faith efforts of solution providers and carriers in developing a CALEA solution . . .” 1998 Implementation Report, at 15.

and designing their individual J-STD-025 solutions, many manufacturers have spent the last three years repeatedly meeting with the FBI and Department in search of a compromise on CALEA implementation.³⁴ Despite these good faith efforts, no agreement has been reached and the resulting delays and disputes mentioned above mean that compliance is not reasonably achievable by October 25, 1998.

Fortunately, as CTIA noted, “[g]ranted an extension does not mean that carriers will not have the ability to perform wiretaps during the extension period. All carriers currently provide technical assistance to law enforcement to conduct lawfully authorized wiretaps, whether digital or analog, wireless or wireline. The vast majority of these wiretaps are carried out without impediment.”³⁵ In fact, in 1997, federal and state courts granted a record 1,186 Title III wiretap orders, permitting law enforcement agents to transparently intercept approximately two million conversations.³⁶ Several commenters emphasized that they would continue to cooperate with law enforcement and provide the capability to execute wiretap requests within the technical parameters of their existing systems, despite any extension they may receive.³⁷

³⁴ The 1998 Implementation Report, for example, contains a representative list of meetings held in the second half of 1997. See 1998 Implementation Report, Appendix A.

³⁵ CTIA Comments, at 2. See also AT&T Comments, at 5 & n. 15; BAM Comments, at 4; PCIA Comments, at 5.

³⁶ Administrative Office of the United States Courts, *Annual Report of the Director of the Administrative Office of the United States Courts on Applications for Orders Authorizing or Approving the Interception of Wire, Oral, or Electronic Communications -- 1997* (released in April 1998).

³⁷ Aliant Comments, at 1; BAM Comments, at 4; PageNet Comments, at 1 & 4; Southern, at 6.

III. COMMISSION'S AUTHORITY TO GRANT INDUSTRY-WIDE EXTENSIONS

As noted above, the comments overwhelmingly support a universal extension of the CALEA-capability compliance date. Because all carriers face essentially the same circumstances, the Commission should grant a universal extension for all telecommunications carriers that are covered by CALEA, relieving the Commission, industry and the Attorney General³⁸ of the unnecessary administrative burdens that would accompany case-by-case adjudications of individual carrier petitions.

In their comments, however, the Department and FBI challenge the Commission's statutory authority to grant such a universal extension. First, the Government argues that the Commission is not authorized to grant an extension under section 107(b)(5) unless and until the Commission has decided that J-STD-025 is deficient.

Section 107(b)(5) provides that in the absence of -- or challenge to -- an industry standard, the Commission is authorized to "provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 103 during any transition period."³⁹ By its very nature, this new compliance schedule would apply to all carriers that eventually implement solutions consistent with the Commission's final decision.

³⁸ Section 107(c) provides that the Commission, "after consultation with the Attorney General," shall grant an extension if compliance is not reasonably achievable with existing technology. Section 107(c); 47 U.S.C. § 1006(c). Suggesting the administrative burden faced in reviewing each petition individually, the Department has not, as far as TIA is aware, consulted the Commission about each individual petition currently pending. Instead, it appears to have reacted to these petitions generally -- through blanket filings (like its comments).

³⁹ Section 107(b)(5) of CALEA; 47 U.S.C. § 1006(b)(5).

The Department and FBI, however, have taken a narrow interpretation of this provision, contending that the Commission's "authority exists only in the context of the transition from industry standards found to be deficient to *different*, Commission-set standards"⁴⁰ The Department and FBI essentially equate "new" with "different."

Their view is contrary both to practical experience and Congressional intent. First, a Commission-approved standard (even if identical to an original industry standard) is indeed a "new" standard that is "different" in important respects from a standard that both privacy and law enforcement groups have challenged as deficient. Once the Commission's decision is final, manufacturers can be certain that what they are building will not have to be suddenly revised as a result of a challenge. The two standards might be identical on paper, but the difference in level of certainty they offer is fundamental.

What's more, this is a difference recognized by Congress, which clearly did not envision that if an industry standard were challenged, industry participants would have to continue proceeding in the face of those challenges without guidance from the Commission or an appropriate compliance schedule.⁴¹ Instead, Congress expressly provided that in the event of such a challenge, the Commission must "provide a reasonable time and conditions for

⁴⁰ DoJ/FBI Joint Comments, at 12 (emphasis in original).

⁴¹ Contrary to the Department's assertion, Congress did not limit the Commission's authority to establishing a period for "transitioning" to a "different" standard. In the accompanying Committee reports, Congress noted that "[i]f an industry technical requirement or standard is set aside *or supplanted* by the FCC, the FCC is required to consult with the Attorney General and establish a reasonable time and conditions *for compliance with* and the transition to any new standard." H.R. Rep. No. 103-827, at 27 (1994); S. Rep. No. 103-402, at 27 (1994) (emphasis added). Supplanted, of course, simply implies that a subsequent standard, supersedes a previous standard (without any requirement that the content of the two differ).

compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 103 during any transition period.”

Finally, even if the Department’s narrow interpretation of 107(b) were accepted by the Commission, the Commission still has the authority to grant extensions under section 107(c) of CALEA. Section 107(c) grants the Commission the authority, on a petition by a telecommunications carrier, to extend the compliance deadline “if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period.”⁴²

To forestall such extensions, the Department and FBI raise what is, at best, a procedural objection. They argue that the Commission lacks authority to grant “blanket” extensions under section 107(c). Since the Government does not argue that the Commission lacks authority to grant the same extension to all carriers -- so long as the extensions are granted individually -- this position is best understood as an effort to make the granting of such extensions burdensome and costly. The Government’s position should be rejected both for that reason and because such a result is not compelled by CALEA.

Although section 107(c) speaks of petitions by “a carrier,” several commenters have noted that nothing in the provision explicitly prohibits the Commission from exercising its authority through a blanket extension.⁴³ Moreover, as several of the comments demonstrate, the Commission has frequently granted blanket relief in similar situations and, thus, avoided the administrative burden to both the affected parties and the Commission staff of preparing and

⁴² Section 107(c)(2) of CALEA; 47 U.S.C. § 1006(c)(2).

⁴³ AT&T Comments, at 6; BAM Comments, at 4; SBC Comments, at 4.

reviewing essentially identical petitions.⁴⁴ Both CALEA and the Communications Act authorize the Commission to act as necessary in the execution of its functions and to choose to conduct its proceedings in ways that best enable the Commission to perform its functions fairly and reasonably.⁴⁵ As the Commission itself implied in its *Public Notice*, duplicative filings by individual carriers is unnecessary and a great waste of valuable resources for carriers and the Commission alike. Moreover, as some comments suggested, granting extensions on an individual basis could have an anti-competitive impact.⁴⁶

In the unlikely event that the Commission decides that it can only grant individual extensions pursuant to section 107(c), there are still several options the Commission can utilize to reduce the administrative burden on both petitioners and the Commission staff. One option would be to entertain “bundled” petitions from groups of carriers. In order to avoid the repetition of hundreds of petitions reciting the same facts and legal arguments, carriers might participate in a joint document that outlines the facts and issues common to all parties. Each carrier could then append a separate petition, alluding to the joint document and providing any additional, specific facts that might be required.

Another option, suggested by ICG Telecom Group, would be to entertain brief, *pro forma* submissions by carriers. Since the record is well established, the Commission might

⁴⁴ See, e.g., AirTouch Comments, at 8; AT&T Comments, at 7; CTIA Comments, at 14-15; PrimeCo Comments, at 5; SBC Comments, at 4; USTA Comments, at 5.

⁴⁵ Section 301(a) of CALEA; 47 U.S.C. § 223; Section 4(i) of Communications Act; 47 U.S.C. § 154(i). See, e.g., Carrier Association Response, at 13 & n. 30; PrimeCo Petition, at 13 & n. 42; PCIA Comments, at 11; Omnipoint Comments, at 4; SBC Comments, at 4.

⁴⁶ AT&T Comments, at 6; ALTS Comments, at 3-4.

encourage carriers to file simple certifications, indicating that the petitioner is a telecommunications carrier within the meaning of CALEA and that -- for the reasons already established before the Commission -- compliance is not reasonably achievable within the compliance period.⁴⁷

IV. BIFURCATED EXTENSION

In its petition and comments, the Department has urged the Commission to require industry to proceed with development of J-STD-025 while the Commission resolves the legal and technical issues concerning the punch list features.⁴⁸ As several parties have noted, such a bifurcated approach is unnecessarily inefficient and could increase the cost of compliance.⁴⁹ For example, if the Commission decides that either the CDT or Department are correct and that certain features must be added to or removed from J-STD-025, manufacturers could face enormous costs redesigning their equipment accordingly.

It would be more efficient for the Commission to announce that it is tolling the compliance deadline until after it has resolved the current challenges to J-STD-025. Then, after

⁴⁷ ICG Petition, at 5 & n. 5.

⁴⁸ FBI Comments, at 17; FBI Petition, at 4-5.

⁴⁹ *See, e.g.,* AT&T Comments, at 2 & 8; CDT Comments, at 6-7; CenturyTel Comments, at 6; GTE Comments, at 4; Liberty Comments, at 4; Nextel Comments, at 5; Omnipoint Comments, at 3-4; RCA Comments, at 4-5; SBC Comments, at 6; 360° Comments, at 6. *See also* TIA Petition, at 5-7 (“Because any modification in J-STD-025 could require complex changes in a manufacturer’s individual CALEA solution, proceeding in the face of the current challenges to J-STD-025 would cause manufacturers to waste valuable engineering resources, sacrificing other profit-making activity, and expose the companies to the prospect of having to create several versions of its CALEA solution. This clearly would not serve the public interest.”).

resolving these disputes, the Commission could establish a reasonable compliance schedule for manufacturers to develop, test and deploy the software and hardware necessary to implement the Commission's decision -- one solution, one schedule.

If, however, the Commission decides that manufacturers should continue to proceed with their development efforts during the pendency of the Commission's review, the Commission should require manufacturers only to develop those features on which there is agreement and only those that can be built without wasteful duplication, thus minimizing the ultimate cost of compliance. As TIA's members explained in an *ex parte* engineering presentation to the Commission staff, it is more efficient for manufacturers (and their carrier customers) to add features to a design in subsequent upgrades than to build features into a design and subsequently remove them.⁵⁰ By building a "least-common denominator" solution and subsequently adding any additional features, manufacturers avoid both: 1) wasting resources designing unnecessary features and 2) expending additional resources removing those features.

If the Commission decides to take this approach, it should ask manufacturers only to build the unchallenged portions of J-STD-025 at this time. In so doing, however, the Commission should recognize that the application of this rule is not always self-evident. It would, of course, mean not building the punch list. It would presumably mean that manufacturers had no obligation to include the "location" provision of J-STD-025. It is more complicated, however, for packet data. In acting on this provision, it is important to note that J-STD-025 gives manufacturers two options for providing packet data information pursuant to a

⁵⁰ *Ex parte* letter by the Telecommunications Industry Association, CC Docket No. 97-213 (filed on April 30, 1998).

pen register order -- manufacturers can either 1) provide the entire packet data stream to law enforcement and rely on law enforcement to extract the relevant addressing information or 2) forward only addressing headers. The essence of the CDT challenge is that manufacturers should not have that option, that they must find a way to separate packets from the packet headers and forward only the headers to law enforcement.

Some manufacturers view CDT's preferred option as extraordinarily difficult; they plan to take advantage of the first solution. Others may exercise the second. An interim order that seeks to minimize wasted effort would leave this choice in place. What this means in practical terms is that while an interim order could exclude location, it should essentially make no changes in the standard as it currently exists for packet data.

As is consistent with standard industry practice, manufacturers would require approximately 24-30 months to develop and make available for first office application installation and testing such an interim order.⁵¹ Manufacturers would also require a similar period for developing any additional upgrades to J-STD-025 that the Commission may determine are required by CALEA.

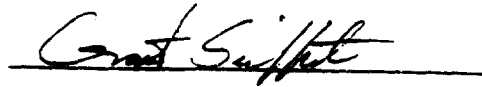
V. CONCLUSION

In light of the near unanimous consensus that compliance with CALEA's capability requirements is not achievable by October 25, 1998, TIA respectfully urges the

⁵¹ See TIA Petition, at 8; AT&T Wireless Petition, at 6 & 10; AirTouch Petition, at 15; AirTouch Comments, at 4; Ameritech Petition, at 7-8; BAM Comments, at 7; CDT Comments, at 7 & n. 11; Nortel Comments, at 4-5.

Commission to exercise its authority under section 107 of CALEA and grant an industry-wide extension of the compliance date.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Grant Seiffert", is written over a horizontal line.

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May 15, 1998

CERTIFICATE OF SERVICE

I, L. Benjamin Ederington, an attorney in the law firm of Steptoe & Johnson, L.L.P., hereby certify that I have on this May 15, 1998 caused to be served by first class mail, postage prepaid, or by hand delivery, a copy of the foregoing Petition to the following:

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